IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1165 OF 2005

Mr. Narayan Varma ...Petitioner

Versus

The State of Maharashtra & Ors ...Respondents

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Mr. S. Garud i/b Mr. Khaitan & Jaykar, Advocate for Petitioner

Ms. Divya Trivedi, Advocate for Respondent No.2.

Mr. D.P. Adsule, A.P.P. for State.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 22ND JULY, 2005

P. C.:-

1. Heard both sides.

2. The petitioner has prayed for quashing of process issued against him in Criminal Case No. 349/S/97 which is pending in the Court of learned Metropolitan Magistrate, 28th Court, Esplanade, Mumbai. In the said case, process has been issued against the petitioner under Section 138 of Negotiable Instruments Act.

3. The petitioner had preferred an application before the learned Magistrate for recall of

process/discharge. The said application came to be rejected by the Magistrate by order dated 5.2.2004. Being aggrieved by the said order, the petitioner had preferred Criminal Revision Application No. 152 of 2004 before the Sessions Court. The Sessions Court held that in view of the decision of the Supreme Court in the case of **Adalat Prasad Vs. Rooplal Jindal and Ors. reported in 2004 (4) Mh.L.J. 274 and Subramanium Sethuraman Vs. State of Maharashtra & Anr. 2005 (1) Mh.L.J. 626,** the revision petition is not maintainable. hence, the petitioner has approached this Court. In view of the order of the Supreme Court in the case of Adalat Prasad, it is clear that the Magistrate has no power to recall the process, hence, I am not inclined to interfere with the order of the Magistrate rejecting the application of the petitioner for recall of process/discharge.

3. However, in my opinion, for the reasons recorded in my order dated 13th June, 2005 passed in Criminal Writ Petition No.213 of 2005 and order dated 21st June, 2005 passed in Criminal Application No.550 of 2005, a revision is maintainable against the order of the Magistrate issuing process, hence, the order of the learned Sessions Judge dated 7.10.2004 dismissing Revision Application No. 152 of 2004 is set aside. The learned Sessions Judge shall hear the said revision afresh and dispose it of on merits. In

order to enable the petitioner to take necessary steps, the proceedings before the trial Court are stayed for a period of four weeks from today. The learned advocate for the petitioner states that he will give four days advance notice to the respondent-complainant in respect of moving the Sessions Court.

4. Office to issue an authenticated copy of this order to the parties.

5. Writ Petition is disposed of.

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